

2011 Montana Legislature

SENATE BILL NO. 315

INTRODUCED BY R. RIPLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL EMPLOYMENT LAW; ESTABLISHING A STANDARD OF REVIEW FOR SCHOOL BOARD ARBITRATION DECISIONS IN MATTERS OF TEACHER TERMINATION SUBJECT TO APPEAL; MODIFYING THE PROCESS BY WHICH A COUNTY SUPERINTENDENT REVIEWS SCHOOL BOARD DECISIONS; CLARIFYING THE MEANING OF GOOD CAUSE; PROVIDING A WRONGFULLY-TERMINATED TEACHER WITH THE SAME REMEDIES AVAILABLE TO OTHER WORKERS UNDER THE WRONGFUL DISCHARGE ACT; AMENDING SECTIONS 20-3-210, 20-4-203, AND 20-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Standard of review for school board ARBITRATION decisions. (1) In any ~~employment matter~~ TEACHER TERMINATION that is decided by a board of trustees and that is ~~subject to review or appeal as a contested case~~ APPEALED TO AN ARBITRATOR ~~under this title~~, the review of the final order of the ~~board of trustees~~ ARBITRATOR UPON APPEAL, ~~whether conducted by an administrative agency, arbitrator, county superintendent, state superintendent, or court~~, must be conducted as provided in subsection (2).

(2) The ~~administrative agency, arbitrator, county superintendent, state superintendent, or court~~ conducting the review ~~or appeal~~ of the ~~board of trustees'~~ ARBITRATOR'S decision may not substitute its judgment for that of the ~~board~~ ARBITRATOR as to the weight of the evidence on questions of fact. The ~~administrative agency, arbitrator, county superintendent, state superintendent, or court~~ conducting the review ~~or appeal~~ of the ~~board of trustees'~~ ARBITRATOR'S decision may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the ~~board's~~ ARBITRATOR'S findings, inferences, conclusions, or decisions are:
  - (i) in violation of constitutional or statutory provisions;
  - (ii) in excess of the statutory authority of the board;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

~~(3) Any decision of an administrative agency, arbitrator, county superintendent, state superintendent, or court conducting the review or appeal of the board of trustees' decision is subject to the review procedures provided in this section.~~

~~Section 2. Section 20-3-210, MCA, is amended to read:~~

~~"20-3-210. Controversy appeals and hearings. (1) Except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. Only a county superintendent who possesses the qualifications of 20-3-201(2) may hear controversies related to teacher termination. Except as provided in subsection (2) (3), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher, or under 20-4-207 relating to the dismissal of a teacher under contract, or regarding any employment termination decision of the trustees, the county superintendent may appoint a qualified attorney to act as a legal advisor who shall assist the superintendent in preparing findings of fact and conclusions of law shall review the decision of the trustees in accordance with the requirements of [section 11]. Subsequently, either the teacher or trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced not later than 60 days after the date of the decision of the county superintendent.~~

~~(2) The county superintendent shall hear and decide all controversies arising under:~~

~~(a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or~~

~~(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.~~

~~(2)(3) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:~~

~~(a) a state agency has been granted primary jurisdiction over the matter;~~

~~(b) the matter is governed by a specific statute; or~~

~~(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.~~

~~(3)(4) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The county superintendent shall prepare a written transcript record of the hearing appeal proceedings. The decision on the matter of controversy that is made by the county superintendent must be based upon the facts established at the board of trustees hearing, and the facts may be overturned only if they are not supported by substantial credible evidence in the record of the board of trustees' proceedings.~~

~~(4)(5) Except for teacher termination cases, the decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply provide a transcript record of the hearing and any other documents entered as testimony at the hearing before the board of trustees and a record of the appeal proceedings before the county superintendent to the superintendent of public instruction. In teacher termination cases, an appeal may be filed with the district court of the county in which the teacher was employed no later than 60 days after the date of the decision of the county superintendent. If an appeal is filed, the county superintendent shall provide a transcript record of the hearing and any other documents entered as testimony at the hearing before the board of trustees and a record of the appeal proceedings before the county superintendent to the district court.~~

~~(5)(6) Cost incurred by the office of the county superintendent must be paid from the general fund budget of the county in which the controversy is initiated."~~

**Section 3 2.** Section 20-4-203, MCA, is amended to read:

**"20-4-203. Teacher tenure.** (1) Except as provided in 20-4-208, whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year as a tenured teacher at the same salary and in the same or a comparable position of employment as that provided by the last-executed contract with the

teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

(3) (a) For the purposes of subsection (1), "same salary" means the daily rate of pay, excluding benefits and excluding stipends for nonteaching duties, multiplied by the number of days worked under the last-executed contract with the teacher, up to the total number of days funded by the state in the per-ANB entitlements, as provided in 20-9-311, including pupil-instruction-related days. The calculation of daily rate of pay is determined by dividing the salary in the last-executed contract with the teacher for pupil-instruction and pupil-instruction-related days, excluding benefits and excluding stipends for nonteaching duties, by the total number of contracted days under the last-executed contract.

(b) The definition of same salary may be modified if negotiated and agreed to in a collective bargaining agreement executed by the district and the teacher's exclusive representative pursuant to Title 39, chapter 31, or in an individual contract between the district and a teacher in a district in which the teachers have no exclusive representative as provided in Title 39, chapter 31.

(4) Upon receiving tenure, the employment of a teacher may be terminated for good cause as defined in 39-2-903."

**Section 4 3.** Section 20-4-204, MCA, is amended to read:

**"20-4-204. Termination of tenure teacher services.** (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

- (a) the statement of the reason or reasons that led to the recommendation for termination; and
- (b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

- (a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

- (b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, who may appoint a qualified attorney as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. If the employment of the teacher is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a tenure teacher shall appeal a decision to terminate an employment contract to an arbitrator agreed upon by the district and the teacher's exclusive representative. If the exclusive representative has declined to represent the teacher, the teacher or the district may request that the board of personnel appeals provide a list of arbitrators from which the teacher and the district shall, after the toss of a coin to determine the order of striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

(6) In a termination involving a teacher whose employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, either the teacher or the trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced no later than 60 days after the date of the decision of the county superintendent.

(7) In a termination involving a teacher whose employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a request for arbitration must be made within 20 days from the date of termination unless an alternative time period is provided by the terms of a collective bargaining agreement.

(8) ~~The~~ Subject to the review procedures provided in [section 1], the decision of the arbitrator is final and binding. Each party shall pay one-half of an arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

(9) An arbitrator, COUNTY SUPERINTENDENT OR REVIEWING COURT may ~~order a school district to reinstate~~ AWARD a teacher who has been terminated without good cause, as defined in 39-2-903, ANY OF THE DAMAGES REFERENCED IN THE REMEDIES AFFORDED A WRONGFULLY-TERMINATED EMPLOYEE UNDER 39-2-905. SUBJECT TO THE LIMITATIONS THEREIN AND IN 2-9-105, MCA. ~~and to provide compensation, with interest, to a teacher for lost wages and fringe benefits from the date of termination to the date that the teacher is offered reinstatement to the same or a comparable position. Interim earnings, including the amount that the teacher could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent by a teacher in searching for, obtaining, or relocating to new employment must be deducted from interim earnings.~~

~~(10) Except as provided in this section, an arbitrator may not order a school district to provide compensation for punitive damages, pain and suffering, emotional distress, compensatory damages, attorney fees, or any other form of damages.~~

(11) Upon submission of the termination decision to an arbitrator, the teacher or the teacher's exclusive representative may not file an action against the district for reinstatement or compensation of lost wages and fringe benefits.

~~(12) All appeals of termination~~ AN ARBITRATOR'S DECISION under this section are subject to [section 1].

~~(12)~~(13) As used in this section, the following definitions apply:

(a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

(b) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

NEW SECTION. **Section 5 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [section 1].

NEW SECTION. **Section 6 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7 6. Applicability.** [This act] applies to:

- (1) decisions on employment matters made by boards of trustees on or after [the effective date of this act]; and
- (2) individual contracts issued or renewed on or after [the effective date of this act].

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